U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33947960

Date: SEP. 30, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a fitness trainer, seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner met the initial evidence requirements of this classification through evidence of either a major, internationally recognized award or by meeting at least three of the evidentiary criteria under 8 C.F.R. § 204.5(h)(3). The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To establish eligibility as an individual of extraordinary ability, a petitioner (or anyone on the petitioner's behalf) must establish that they:

- Have extraordinary ability in the sciences, arts, education, business, or athletics;
- Seek to enter the United States to continue work in their area of extraordinary ability; and that
- Their entry into the United States will prospectively substantially benefit the United States.

Extraordinary ability must be demonstrated by evidence of sustained national or international acclaim as well as extensive documentation that their achievements have been recognized in the field. Section 203(b)(1) of the Act.

The implementing regulation further states that the term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." A petitioner can demonstrate that they meet the initial evidence requirements for this immigrant visa classification through evidence of a one-time achievement (that is, a major, internationally recognized award). If such evidence is unavailable, then they must alternatively provide evidence that meets at least three of the ten listed criteria, which call for evidence about lesser awards they may have received, published material about them in qualifying media, and their authorship of scholarly articles, among other types of evidence. 8 C.F.R. §§ 204.5(h)(2),(3).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination, assessing whether the record shows that the individual possesses the acclaim and recognition required for this highly exclusive immigrant visa classification. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner is a fitness trainer and amateur bodybuilder. He is currently employed in the United States as a fitness trainer, and intends to open his own fitness center.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director found that the Petitioner did not meet any of the evidentiary criteria. On appeal, the Petitioner renews his claim to meet six of the criteria. After reviewing all of the evidence in the record, we conclude that he has not established that he meets the initial evidentiary requirements for classification as an individual of extraordinary ability.

> *Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i)

To meet this criterion, a petitioner must establish that they have received prizes or awards which were granted for excellence in their field of endeavor, and that the prizes or awards are nationally or internationally recognized in their field of endeavor.

The Petitioner submitted several certificates, two of which recognize his second place finish in a regional student bodybuilding competition in 2010. An additional two certificates relate to presentations he gave at conferences while a student at [redacted]. The Director determined that the Petitioner had not established that any of these awards were nationally or internationally recognized in his field of endeavor.

On appeal, the Petitioner restates much of his response to the Director's request for evidence (RFE), and does not identify any errors in the Director's decision regarding this criterion. The Petitioner

appears to primarily rely upon the reputation of [redacted] to demonstrate the national recognition of the latter two certificates, but the evidence does not indicate that the recognition of these awards extended beyond that institution. Notably, an article about the winners of [redacted] "68th final scientific conference" which lists the Petitioner as a third place winner in the "humanities in medicine" category was posted on the institution's website. We also note that none of the four certificates mentioned above, or the two "gratitude letters" from [redacted] and a local mayor, recognize the Petitioner for his performance or achievements as a fitness trainer, his field of endeavor.

As the Petitioner has not established that he has received nationally or internationally recognized awards for excellence in the field of fitness training, we conclude that he does not meet this criterion.

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v)

To meet the requirements of this criterion, a petitioner must establish that not only have they made original contributions, but that they have been of major significance in the field. For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance. *See Visinscaia*, 4 F. Supp. 3d at 134-35.

The Petitioner asserts that his development of a fitness training methodology constitutes an original athletic contribution of major significance, and that this is shown by the numerous reference letters submitted with his petition, as well as a presentation about his methodology. The Petitioner also asserts that the Director erred in not considering the additional reference letters he submitted in response to the Director's RFE.

Regarding the latter point, the Director rejected consideration of the new letters because they were dated after the filing of the petition. A petitioner must establish eligibility for the requested classification at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi,* 22 I&N Dec. 169, 175 (Comm'r 1998). However, the reference letters primarily address facts that existed prior to the time of filing, and the letters are not new facts but the opinions of the Petitioner's colleagues and clients. Accordingly, we will consider them as part of the record in our review.[1]

Many of the letters submitted, initially and in response to the Director's RFE, are from the Petitioner's clients. Some of them are bodybuilders who credit the Petitioner for helping to improve their competitiveness. For example, E-D- states that the Petitioner became his personal trainer in 2007, and helped him to win local bodybuilding competitions the next year.[2] J-S- similarly credits the Petitioner for preparing him for winning a local bodybuilding competition in 2017. Both describe his fitness training methodology using words such as "innovative" and "groundbreaking." But as noted in the

[1] We have reviewed and considered all of the reference letters in the record, including those which are not specifically referenced in this decision.

[2] The record shows that the Petitioner completed training in sports nutrition and personal training in 2015, but includes no evidence of his qualifications as a personal trainer in 2007. This discrepancy must be addressed in any further proceedings in this matter.

Director's decision, neither writer explains the way in which Petitioner's methodology and techniques are truly novel or innovative. While the Petitioner may well have helped these individuals in their training, the letters do not show that his training methodology has impacted the field beyond his individual clients to reach the level of contribution required under this criterion. *See Amin v. Mayorkas*, 24 F.4th 383, 393-394 (5th Cir. 2022) (finding that contributions which were not adopted beyond a petitioner's employer do not meet this criterion).

Other letters were written by clients who state that the Petitioner's training helped them to overcome the effects of health issues. R-M- writes that the Petitioner's method "significantly altered the course of my struggle with rheumatoid arthritis," and briefly describes the tailored exercise and nutrition programs the Petitioner delivered. D-W- states in his letter that after he suffered a significant injury, the Petitioner's training program helped him in his recovery. But we note that the record does not show that the Petitioner is a licensed physical therapist, and much like the letters discussed above, these are testimonials from satisfied clients which do not demonstrate that the his training methods have impacted or influenced the larger field of fitness training.

Some of the letters assert that the Petitioner's training methods have had broader impacts beyond individuals. For example, the letters from M-V-G-, discussed in further detail below in our analysis under the criterion at 8 C.F.R. § 204.5(h)(3)(viii), describe how the Petitioner's training program has been used in medical classes at [redacted] and the Petitioner asserts that it has also been used in other educational institutions in Russia. But the letters lack sufficient detail regarding how the methodologies were used, and the record lacks evidence to support the Petitioner's claims regarding their implementation at other universities.

In a different vein, V-V-T- writes in her letter that she has used the Petitioner's fitness methodology in her neurology practice, and in particular in the rehabilitation of patients recovering from strokes. As we noted above, the Petitioner is not a licensed physical therapist or any other type of medical practitioner, and the assertions that his fitness training has medical applications lack credibility and are not supported by documentary evidence beyond the letters.

Regarding the presentation describing the Petitioner's fitness methodology, the Director stated in her decision that there was no evidence in the record of its publication or distribution. While the Petitioner does not respond or repudiate this point on appeal, we note that the methodology appears to be derived from papers authored by the Petitioner and published in at least one medical journal.[3] But the publication of these papers is not sufficient to show that the Petitioner's training methods have been of major significance in the field of fitness training, as it does not show the field's reaction, if any, to those papers.

Per the above discussion, the Petitioner has not established that his fitness training methodology or techniques have influenced his field of endeavor to the extent that they are or major significance, and he therefore does not meet this criterion.

[3] At least one of the journals in which papers related to the Petitioner's fitness training methodology were published was a journal focused on publishing the works of young researchers and students, including undergraduates, and as such cannot be considered a professional or major trade publication.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii)

To meet the requirements of this criterion, a petitioner must submit evidence that their work in the field of endeavor has been displayed, and that the exhibition or showcase where their work was displayed was artistic in nature. An exhibition is defined as a public showing. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), www.uscis.gov/policy-manual.

In this case, the Petitioner asserts that the evidence of his participation in amateur bodybuilding competitions meets the requirements of this criterion. While he initially claimed this to be comparable evidence of the display of his work in the field at artistic exhibitions, on appeal the Petitioner refers to the USCIS Policy Manual and its definition of "exhibition," which includes examples of "works of art, objects of manufacture, or athletic skill." However, this inclusion of a definition for "exhibition" in the policy manual does not negate the regulatory language requiring that the exhibition or showcase be artistic in nature, and the Petitioner has not demonstrated that a bodybuilding competition is artistic. More importantly, the Petitioner does not explain how his participation in bodybuilding competitions relates to his field of endeavor as a fitness trainer, in which the fruits of his work are seen in others.

The Petitioner also asserts that his presentations at conferences should be considered to be comparable evidence under this criterion per the regulation at 8 C.F.R. § 204.5(h)(4). But his unsupported assertion that this evidentiary criterion does not readily apply to his occupation is not probative. *Id.* And even if we were to accept the Petitioner's statement that he is "not an artist" as sufficient, which we do not, he has also not explained how the presentation of posters and abstracts at conferences is comparable to the display of art in a gallery or museum, for example. Further, the Petitioner has not identified which of the presentations involved his field of fitness training. We note that several of the presentations focus on the Russian healthcare system, which the Petitioner has not asserted to be his field of endeavor.

For all of the reasons given above, we conclude that the Petitioner has not established that he meets this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii)

To meet the requirements of this criterion, a petitioner must first establish that they have served in a role that was either leading or critical for an organization or establishment, or a department of division thereof, and that the organization, establishment, department, or division has a distinguished reputation. Evidence of a leading role may include a title and matching duties, and should indicate that the petitioner is or was a leader. Evidence supporting a critical role should show that the petitioner has contributed in a way that is of significant importance to the outcome of the organization's or establishment's activities, or those of a division or department. Second, a petitioner must show that the organization or establishment, or department or division thereof, for which the leading or critical role was performed has a distinguished reputation. Factors may include the size, longevity, media coverage, awards, and industry rankings of the organization, establishment, department, or division. *See generally* 6 *USCIS Policy Manual* F.2(B)(1).

Here, the Petitioner relied on his roles with S-T- LLC and [redacted] The evidence regarding his role with the former includes an agreement by which the Petitioner served as a brand ambassador for the company for an initial period of approximately three months. A letter from A-R-, the company's CEO, states that due to the Petitioner's role, the company secured major contracts for distribution of its products, and that he anticipates that the Petitioner will represent S-T- LLC at events in the United States in the future. A second letter from A-R-, submitted in response to the Director's RFE, reiterates that the Petitioner has been "pivotal in securing major contracts," and that he was "instrumental" in the company's successful entry into three named countries. However, the letter does not quantify the significance of the Petitioner's impact on the company's profitability, or provide other detailed information concerning his importance to the company's activities. Per the section of the USCIS Policy Manual referenced in the Petitioner's brief, letters such as these can be helpful as long as they include detailed and probative information. *Id.* The letter also stresses the Petitioner's role in trade shows, but only specifically mentions the [redacted] Festival, in which the Petitioner competed in 2019 and 2020. And as in the previous letter, A-R- stresses the Petitioner's future activities on the company's behalf in the United States, which does not demonstrate how he has already played a critical role for the company. As such, this evidence does not establish that as a brand ambassador, the Petitioner played a leading or critical role for S-T- LLC.

Turning to the Petitioner's role for [redacted], he submitted two letters from M-V-G-, who states that she is the chairman of the trade union bureau of students at the institution. In her first letter, she states that the Petitioner's fitness training methodology has been used in "the educational process" for five courses at the university, including physiology, anatomy, and endocrinology. Her second letter provides additional explanation, stating that the integration of the Petitioner's fitness techniques into these courses is "instrumental in fostering a more comprehensive approach to health education." She writes that students experience "physical implications in real-time through [the Petitioner's] fitness programs," and that his methodologies "instill[ing] habits of physical fitness and holistic health in future medical professionals." We first note that the writer does not describe any details of the Petitioner's methodologies beyond vague references to a "periodization system and a nutrition plan," nor does she explain how exactly these are incorporated into a classroom setting. More importantly, she does not indicate the extent to which the Petitioner's work has impacted the five named courses, or how this has affected quantifiable educational outcomes at [redacted] Finally, as M-V-G- does not explain her role at [redacted] in any detail, the level of her personal knowledge of the Petitioner's methodologies and their impact on the university's medical curriculum is not apparent.

For the reasons stated above, the Petitioner has not demonstrated that his roles with either of these organizations have been leading or critical. As the Petitioner has not established that he meets this element of this criterion, we need not discuss the remaining element to ascertain whether the Petitioner meets all of the criterion's requirements. Nevertheless, we have reviewed the evidence in the record and conclude that it does not show that either S-T- LLC or [redacted] has a distinguished reputation.

B. Final Merits Determination

Although the Petitioner claims eligibility for two additional criteria on appeal, relating to published material about him and his work at 8 C.F.R. § 204.5(h)(3)(iii) and his authorship of scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi), we need not reach these additional grounds. As the Petitioner cannot

fulfill the initial evidentiary requirement of meeting at least three of criteria under 8 C.F.R. § 204.5(h)(3), the identified basis for denial is dispositive of the appeal. We therefore reserve the Petitioner's appellate arguments regarding these additional evidentiary criteria. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible). Accordingly, we need not provide the type of final merits determination referenced in *Kazarian,* 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

III. CONCLUSION

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for those progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown that the significance of their work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and that they are one of the small percentage who have risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

ORDER: The appeal is dismissed.